In the Supreme Court of the United States

OCTOBER TERM, 1948

COCHINOYE-MEXICAN COAST CORPORATION, COCHINOYE COMPANY, INC., COCHINOYE-MEXICAN COAST CORP., BANK OF PENNSYLVANIA, AND [illegible] COMPANY, PETITIONERS

v.

MAURICE [illegible]
EXCHANGE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT [illegible]

BRIEF FOR [illegible]

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 358

COSGROVE-MEEHAN COAL CORPORATION, COSGROVE & COMPANY, INC., COSGROVE-MEEHAN COAL COMPANY OF PENNSYLVANIA, AND LENOX COAL COMPANY, PETITIONERS

v.

MAURICE P. ANGLAND AND SECURITIES AND EXCHANGE COMMISSION, INTERVENER

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE SECURITIES AND EXCHANGE COMMISSION IN OPPOSITION

OPINIONS BELOW

The opinion of the circuit court of appeals (R. 24–28), as amended (R. 34), is reported at 136 F. (2d) 3. The opinion of the district court (R. 1–5) is unreported.

JURISDICTION

The decree of the circuit court of appeals was entered May 24, 1943 (R. 29); rehearing was

denied June 17, 1943 (R. 34); and leave to file a second petition for rehearing was denied June 29, 1943 (R. 36). The petition for a writ of certiorari was filed September 15, 1943. The jurisdiction of this Court is invoked under Section 24 (c) of the Bankruptcy Act, as amended (11 U. S. C. § 47 (c)), and Section 240 (a) of the Judicial Code, as amended by the act of February 13, 1925.

QUESTION PRESENTED

The sole question presented is whether, after the confirmation of a plan of reorganization under Chapter X of the Bankruptcy Act, the circuit court of appeals erred in remanding the cause to the district court in order that it might determine whether it should reopen the proceedings to consider a creditor's claim.

STATUTE INVOLVED

The pertinent statutory provisions are set out in the Appendix, *infra*, pp. 8–9.

STATEMENT

Maurice P. Angland filed two applications requesting allowances of compensation for services in the reorganization proceedings of the petitioners under the Bankruptcy Act.[1] The first appli-

[1] The proceedings were instituted under Section 77B (11 U. S. C. § 207), but they were subsequently made subject to the provisions of Chapter X. The Commission has participated in the courts below and is a party here pursuant to Section 208 of that chapter (11 U. S. C. § 608).

cation covers services performed by Angland as a member of a bondholders' committee (Doc. No. 131). The other covers services performed by Angland prior to the reorganization proceedings as agent or trustee of the debtor in salvaging properties of an Illinois subsidiary which was then in bankruptcy (Doc. No. 130).

The district court disallowed both applications because of the disqualifications imposed by Section 249 of Chapter X (11 U. S. C. § 649) on fiduciaries who have traded in the debtor's securities. The circuit court of appeals affirmed with respect to the first application, and no question as to that application is presented here. As to the second, the circuit court of appeals held that the claim for services in salvaging the debtor's property prior to bankruptcy was not a reorganization claim conclusively barred by Section 249, but was a creditor's claim which might or might not be barred by general equitable principles. The court reversed and remanded for the purpose of permitting Angland to apply to the district court for "a reopening of the proceeding" (R. 28),[2] in the district court's discretion, in order that the claim involved in his second application might be passed upon as a claim against the debtor's estate.

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[2] Actually no final decree closing the estate has yet been entered by the district court under Section 228 (11 U. S. C. § 628), but it is assumed in this brief that Angland's application will be treated for practical purposes as one to reopen the proceedings.

The debtor's petition for a writ of certiorari does not question the correctness of the court's holding that the claim for services in salvaging the debtor's Illinois subsidiary was properly a creditor's claim rather than a reorganization claim. The debtor argues simply that the court below erred in holding that the district court had jurisdiction to reopen the proceedings for the purpose of determining the claim as a creditor's claim after the confirmation of a plan of reorganization.

ARGUMENT

The petition for a writ of certiorari should be denied because (1) the order sought to be reviewed is not a final order and (2) the decision below involves neither a conflict of decisions nor a question of sufficient public importance to warrant review by this Court.

(1) The order remanding the cause to the district court for further proceedings is not a final order. *Union Mutual Life Insurance Co.* v. *Kirchoff,* 160 U. S. 374. Since the granting or denial of an application to reopen the proceedings will be addressed to the sound discretion of the district court,[3] it is entirely possible that the

[3] *In re Leigh*, 272 Fed. 678 (C. C. A. 7), certiorari denied *sub nom. Chicago Railway Equipment Co.* v. *Laughlin*, 256 U. S. 698; *In re Schreiber*, 23 F. (2d) 428 (C. C. A. 2), certiorari denied *sub nom. Schreiber* v. *Public National Bank & Trust Company of New York*, 277 U. S. 593; *In re Butts*, 123 F. (2d) 250 (C. C. A. 2). The circuit court of appeals here made this quite clear in its opinion, particularly as amended (R. 28, 34).

court in the exercise of its discretion will refuse to reopen at this late stage. See, *e. g., Mohonk Realty Corp.* v. *Wise Shoe Stores, Inc.,* 111 F. (2d) 287 (C. C. A. 2), certiorari denied, 311 U. S. 654; cf. *Burton Coal Co.* v. *Franklin Coal Co.,* 67 F. (2d) 796 (C. C. A. 8) (ordinary bankruptcy). It is possible also that the court will in its discretion reopen the proceedings, but disallow Angland's claim as a creditor because of a breach of his fiduciary obligations apart from Section 249 of the Bankruptcy Act. See, *e. g., In re Paramount-Publix Corp.,* 12 F. Supp. 823, 831 (S. D. N. Y.); *In re Republic Gas Corp.,* 35 F. Supp. 300 (S. D. N. Y.); *In re Mountain States Power Co.,* 118 F. (2d) 405, 408 (C. C. A. 3); cf. *American United Mutual Life Insurance Co.* v. *Avon Park,* 311 U. S. 138, 146–47 (Chapter IX); *Woods* v. *City National Bank & Trust Company of Chicago,* 312 U. S. 262; *Pepper* v. *Litton,* 308 U. S. 295, 306. In other words, the order remanding the proceedings is not a final order which in any sense adjudicates Angland's right either to have the proceedings reopened, or to have his claim allowed.[4] This alone is sufficient ground, in the Court's discretion, for denying certiorari. *Hamilton-Brown Shoe Co.* v. *Wolf Brothers & Co.,* 240 U. S. 251, 257–258.

[4] If the order below stands, the Commission may take the position in the district court that under all the circumstances the proceedings should not be reopened, or that Angland's claim should be disallowed; or it may make both these arguments.

(2) The petition presents no question of public importance and there is no conflict of decisions. Section 2a (8) of the Bankruptcy Act (11 U. S. C. § 11a (8)) specifically gives the court power to "reopen estates for cause shown."[5] Under this provision, as well as its general equity powers, the reorganization court has jurisdiction to reopen the proceedings, even after confirmation of a plan and after the expiration of the time for appeal, in order to permit the filing of a claim which was not filed within the time originally set by reason of mistake or fraud or other good cause. Cf. *Mohonk Realty Corp.* v. *Wise Shoe Stores, Inc.*, 111 F. (2d) 287 (C. C. A. 2), certiorari denied, 311 U. S. 654; *Wayne United Gas Co.* v. *Owens-Illinois Glass Co.*, 300 U. S. 131, 136–137; *Zeleznik* v. *Grand Riviera Theater Co.*, 128 F. (2d) 533, 537 (C. C. A. 6).[6] An order reopening the proceedings may be reviewed for abuse of discretion. *Standard Steel Works* v. *American Pipe & Steel Corp.*, 111 F. (2d) 1000 (C. C. A. 9). But there is no question of the court's jurisdiction.

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[5] By virtue of Section 102 (11 U. S. C. § 502) this provision applies in proceedings under Chapter X because it is not inconsistent or in conflict with the provisions of that chapter.

[6] Cf. also *Pepper* v. *Litton*, 308 U. S. 295, 305, n. 11, where this Court said with respect to the analogous problem whether a claim may be proved in ordinary bankruptcy proceedings after the six-month period specified in Section 57n (11 U. S. C. § 93n): "* * * even though the act provides that

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

CHARLES FAHY,
Solicitor General.
ALVIN J. ROCKWELL,
Attorney.

JOHN F. DAVIS,
Solicitor.
LOUIS LOSS,
DAVID FERBER,
Attorneys,
Securities and Exchange Commission.

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claims shall not be proved against a bankrupt estate subsequent to six months after the adjudication, the bankruptcy court in the exercise of its equitable jurisdiction has power to permit claims to be proved thereafter in order to prevent a fraud or an injustice."